

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,

Plaintiff,

vs.

No. CIV 07-1043 JB/ACT

UNITED STATES FOREST SERVICE,

Defendant,

NEW MEXICO CATTLE GROWERS'
ASSOCIATION, COALITION OF ARIZONA/
NEW MEXICO COUNTIES FOR STABLE
ECONOMIC GROWTH, and NEW MEXICO
FEDERAL LAND COUNCIL,

Defendant-Intervenors.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Opposed Motion to Correct and Supplement the Administrative Record, filed August 8, 2008 (Doc. 41). The Court held a hearing on December 3, 2008. The primary issue is whether the Court should add to the administrative record three documents: (i) the Mexican Wolf Three-Year Program Review and Assessment (the "Three-Year Review"); (ii) the Mexican Wolf Blue Range Reintroduction Project Five-Year Review ("Five-Year Review") in its entirety; and (iii) Mexican Wolf Blue Range Reintroduction Project Statistics ("Statistics Table"). For the reasons stated at the hearing, for further reasons consistent with those already stated, and because the Court believes it needs these three documents to determine whether Defendant United States Forest Service should have considered them in its decision-making, the Court will add at least portions of the three documents to the Court's record, but will defer making a decision whether to add the documents to the administrative record until it

makes a final ruling on the merits of Plaintiff WildEarth Guardians' appeal of the administrative decisions.

WildEarth Guardians originally sought to have the Court correct two errors in the administrative record lodged with the Court and supplement the record with twelve items. See Memorandum in Support of Plaintiff's Opposed Motion to Correct and Supplement the Administrative Record at 8-11, filed August 8, 2008 (Doc. 41-2). Before the hearing, the parties resolved many of their differences and the Forest Service has agreed to add to the administrative record the first eight items that WildEarth Guardians requests. See Reply in Support of Plaintiff's Motion to Correct and Supplement the Administrative Record (Dkt. 41) at 2, filed September 12, 2008 (Doc. 46). Additionally, at the hearing, James Tutchton, counsel for WildEarth Guardians, stated that the Forest Service had indicated that the twelfth item that WildEarth Guardians wanted added to the administrative record did not exist. See Transcript of Hearing at 10:3-10 (Tutchton)(taken December 3, 2008).¹ Accordingly, only three items remain in dispute.

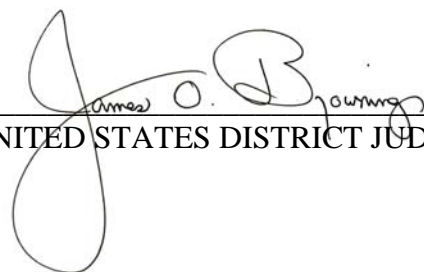
As stated at the hearing, the Court will add the Three-Year Review to the Court's record. The Court will also add the Technical Component of the Five-Year Review to the Court's record, but will not add the entirety of the Five-Year Review. Finally, the Court will add the March 2007 version of the Statistics Table to the Court's record. Although WildEarth Guardians proffered the Statistics Table that was up-to-date as of December 31, 2007, the Court does not believe it is appropriate to use information that was compiled after the date of the last decision being appealed, which was in September 2007. Because WildEarth Guardians has stated that it can provide the Court with a March 2007 version of the Statistics Table, the Court will add that document to its

¹ The Court's citations to the transcript of the hearing refer to the court reporter's original, unedited version. Any final transcript may contain different page and/or line numbers.

record.

The Court will add these three documents to its record, as stated. When the Court is issuing its final ruling and has reviewed the parties' briefing on the merits, the Court will be in a better position to determine whether any of these documents should be added to the administrative record. The Court will keep in mind the arguments for and against supplementation that the parties made in their briefing on this motion and at the hearing. Until the Court issues its final ruling, however, the Court will defer deciding whether to supplement the record.

IT IS ORDERED that the Plaintiff's Opposed Motion to Correct and Supplement the Administrative Record is granted in part and denied in part. The Court will add: (i) the Mexican Wolf Three-Year Program Review and Assessment; (ii) the Technical Component of the Mexican Wolf Blue Range Reintroduction Project Five-Year Review; and (iii) the March 2007 version of the Mexican Wolf Blue Range Reintroduction Project Statistics to its record, but will not, at this time, add them to the administrative record. The Court will decide whether to supplement the administrative record when it rules on the merits of the appeal. The remainder of Plaintiff WildEarth Guardians' requests for supplementation are denied as moot.



UNITED STATES DISTRICT JUDGE

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-- and --

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